



# Export Control Regulations

Presented to  
**Michigan Technological University**

Daniel S. Jones

May 4, 2004

# Export Agencies & Regulations

- Export Administration Regulations (EAR)
  - Department of Commerce, Bureau of Industry and Security (BIS)
  - Commercial or dual-use items (military/commercial)

# Export Agencies & Regulations

- International Traffic in Arms Regulations (ITAR)
  - Department of State, Office of Defense Trade Control (ODTC)
  - Military items classified on the Munitions List

# Export Agencies & Regulations

- Department of the Treasury
  - Office of Foreign Assets Control (OFAC)
- Department of Justice
- Department of Energy
- Nuclear Regulatory Commission
- Department of Homeland Security
  - Boarder and Transportation Security
  - U.S. Customs

# Export Defined

- Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data.

# Export Defined

- Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad (so-called “deemed export”).

# Foreign Person

- Any natural person who is not a lawful permanent resident or who is not a protected individual.
  - Green card = permanent resident.
  - Student visa = not permanent resident.

# Foreign Person

- Any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

# University Exceptions for Deemed Exports

- No license required under EAR or ITAR for the deemed export of technology that:
  - is already published or will be published;
  - arises during or results from fundamental research;
  - is educational; or
  - is included in patent applications and communicated to foreign persons under certain conditions.

15 CFR 734.3(b)(3) & 734.7-734.9;  
22 CFR 120.10 & 120.11

# “Published” and “Public Domain” Exceptions

- Information is published when generally accessible to the interested public in any form, and including:
  - Published in any media (Internet, bookstores, newsstands, etc.).
  - Available in public or university libraries.
  - Published in patent or patent application.
  - Released at an “open” conference.

# “Published” and “Public Domain” Exceptions

- Conference considered “open” if:
  - All technically qualified members of the public are eligible to attend.
    - May charge a registration fee.
    - May limit number in attendance if done on first-come-first-serve basis.
  - Attendees are permitted to take notes or otherwise make a personal record of the proceedings.

# “Fundamental Research” Exception

- Basic and applied research in science and engineering, where resulting information is ordinarily published and shared broadly within the scientific community.
- Not proprietary research or industrial R&D, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons.

# “Fundamental Research” Exception

- Not fundamental research if:
  - University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity.
  - Research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

# “Fundamental Research” Exception

- Transfer of background proprietary information is not part of the fundamental research and is subject to export regulation.
- Still considered fundamental research if sponsor requires prepublication review for removal of background proprietary information or to avoid compromising patent rights.

# “Fundamental Research” Exception

- Foreign nationals can work on research projects and write theses, just as United States students can, provided the research qualifies as “fundamental research.”

# “Educational” Exception

- No license required for information released by instruction in catalog courses and associated teaching laboratories of academic institutions.
- If you teach it in an open-enrollment class with no registration restrictions, there is no export license required!

# Export of Items

- Important questions:
  - What is my item?
  - Where is it going?
  - Who will receive it?
  - What will be the end use?
  - What else do I know about my end user?

# Export of Items

- Important concept:
  - Exporter is responsible for knowing where export is going and what end use is.
  - Exporter is not permitted to “self blind.”
  - Exporter obligated to disclose its own violations and the potential violations of others.

# Export of Items

- General Prohibitions must be checked.
  - There are 10 General Prohibitions.
  - No exports to certain persons, countries, end use, and end users.

# General Prohibitions

- Denied Persons (Dept. of Commerce)
  - Parties previously denied export privileges.
- Unverified List (Dept. of Commerce)
  - Foreign parties to transactions, where post-shipment verifications or pre-licensed checks could not be conducted.

# General Prohibitions

- Entity List (Dept. of Commerce)
  - Foreign parties for which there are concerns of possible proliferation activities.
- Debarred List (Dept. of State)
  - Persons convicted of violating or conspiring to violate the Arms Export Control Act

# General Prohibitions

- OFAC Lists (Dept. of Treasury)
  - Countries against which United States has declared embargo or sanctions.
  - Countries accused by United States of sponsoring terrorism.
- OFAC Lists Primarily Address:
  - Cuba, North Korea, Libya, Iraq, Iran, Burma (Myanmar), Sudan, Liberia, The Balkans, and Zimbabwe
  - Diamond Trade, Narcotics, Terrorism, and Weapons of Mass Destruction

# Red Flags

1. The customer or purchasing agent is reluctant to offer information about the end-use of a product.
2. The product and purchaser or country do not “fit.”
  1. A small bakery places an order for several sophisticated lasers.
  2. Semiconductor manufacturing equipment in a country without an electronics industry.

# Red Flags

4. Customer profile/behavior raises concerns:
  4. Has little or no business background.
  5. Willing to pay cash for a very expensive item.
  6. Unfamiliar with the product's performance characteristics but still wants the product.
  7. Declines routine installation, training or maintenance services.
  8. Evasive or unclear about whether the purchased product is for domestic use, export or reexport.

# Red Flags

7. Suspicious transaction parameters:
  7. Delivery dates are vague, or deliveries are planned for out-of-the-way destinations.
  8. A freight forwarding firm is listed as the product's final destination.
  9. Shipping route is abnormal for the product and destination.
  10. Packaging is inconsistent with the stated method of shipment or destination.

# Is a License Required?

- Assuming no General Prohibitions apply:
  - If it is not on the EAR or ITAR list of restricted items, no license is required.
  - If item is on the list and exception applies, no license required.
  - Even if item is on the list and no exception applies, regulations may not require license for export to country of destination.

# Applying for License

- If unsure, apply for license or request that BIS or ODTC classify the item for you.
- License may be applied for electronically via Internet
  - BIS – Simplified Network Application Process (SNAP)
  - ODTC – Electronic Licensing Entry System (ELLIE)

# Applying for License

- Technical data describing export item must be provided.
- Purchase order required for export license under ITAR.
- If all goes well, license may be obtained in 45-60 days.

# Applying for License

- After license granted, Shippers Export Declaration (SED) or Automated Export System (AES) Record may be required.
  - Used to track exports and for statistics of U.S. Customs/Census Bureau/BIS.

# Export Enforcement

- Office of Export Enforcement (BIS)
- Michigan is in a ten-state region with enforcement headquarters in Chicago, IL.
- Investigations may be criminal or administrative.
- Sanctions may include criminal fines and imprisonment, civil penalties, and denial of export privileges.

# Enforcement Examples

- February 5, 2004 – \$38,000 civil penalty.
  - Exported and attempted to export military truck parts to South Korea without required export license.
  - Had a license, but shipments were in excess of the dollar limit on the export license.
  - \$8,000 of civil penalty suspended for one year, and will be waived if no violations in during suspension period.

# Enforcement Examples

- April 2, 2004 - \$266,750 civil penalty.
  - 97 exports of Conotoxin (used by researchers to study biological molecular activity and structure) and tetrodotoxin (reagent used in neuroscientific experiments to study cell structure).
  - Both toxins controlled under EAR for chemical and biological, chemical warfare, and antiterrorism reasons.
  - Voluntary self-disclosure and full cooperation.

# MTU Export Examples

- Scott Bradley - Bushing Durability Tester to South Korea
- Brad King - NASA Project
- Phil Merkey
- Craig Friedrich

# MTU Policy

- All sponsored projects received by MTU with national security restrictions on publication of results and/or participation by foreign nationals will be administered through Jay Meldrum at KRC.

# MTU Policy

- In all cases, MTU will not accept projects unless both the Principal Investigator (PI) and unit administrator(s) concur with this decision, and agree to comply, and enforce compliance, with all contract terms and conditions.

# MTU Policy

- MTU will not under any circumstance accept research funding supporting development of graduate student theses/dissertations when publication is prohibited or requires prior sponsor approval.

# MTU Policy

- MTU will accept research funding when advance sponsor notification or limited-time (generally < 60 days) sponsor review prior to publication is required for review of intellectual property.

# MTU Policy

- MTU may consider accepting national security publication restrictions when these are immaterial to the conduct of the project or the thesis/dissertation of a student working on the project (such as testing or service projects)

# MTU Policy

- MTU may consider accepting restrictions on participation by foreign nationals when these are immaterial to the conduct of the project; this determination is to rely heavily on the recommendations of the PI and unit administrator(s).

# Questions?

